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Attorneys for:

REGAL STONE, LTD., *in personam*, M/V COSCO BUSAN, *in rem*

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT CALIFORNIA**

CHELSEA, LLC, MARK RUSSO, ALLEN  
LORETZ, and IVAN SIMPSON,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

REGAL STONE, LTD., HANJIN  
SHIPPING, CO., LTD., CONTI CAIRO  
KG, NSB NEIDERELBE, SYNERGY  
MARITIME, LTD., *IN PERSONAM*, M/V  
COSCO BUSAN, their engines, tackle,  
equipment, appurtenances, freights, and  
cargo *IN REM*,

Defendant.

Case No. C 07 05800 (SC)

**DEFENDANT REGAL STONE, LTD.'S  
ANSWER**

Defendant REGAL STONE, LTD. (hereinafter "Defendant") hereby  
responds to Plaintiffs' CHELSEA, LLC, MARK RUSSO, ALLEN LORETZ, and IVAN  
SIMPSON, individually and on behalf of all others similarly situated (hereinafter

1 “Plaintiffs”) Verified First Amended Class Action Complaint and admits, denies, and  
2 alleges as follows. Defendant reserves the right to file appropriate amendments to this  
3 Answer, if necessary, if and when additional information is obtained.

4 1. Defendant admits the allegations contained in Paragraph 17 of  
5 Plaintiffs’ Complaint.

6 2. Defendant denies the allegations contained in Paragraphs 2, 3, 10,  
7 11, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 40, 41, 42, 43, 44,  
8 45, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, and 58 of Plaintiffs’ Complaint.

9 3. Defendant has insufficient information to respond to those  
10 allegations contained in Paragraphs 1, 4, 5, 7, 8, and 9 of Plaintiffs’ Complaint and  
11 therefore based upon its lack of information and belief, Defendant denies the allegations  
12 contained therein in their entirety.

13 4. To the extent that the Plaintiffs incorporate by reference allegations  
14 contained in Paragraphs 35, 38, 46, 51, Defendant incorporates herein its responses  
15 thereto.

16 5. Answering paragraph 6, Defendant denies that a class exists or class  
17 treatment is appropriate. Defendant has insufficient information to respond to all other  
18 allegations in Paragraph 6 and therefore based upon its lack of information and belief,  
19 Defendant denies the allegations contained therein in their entirety.

20 6. Answering paragraph 12, Defendant admits Regal Stone is  
21 incorporated in Hong Kong and is the owner of the M/V Cosco Busan. Defendant denies  
22 all other allegations contained therein.

23 7. Answering paragraph 13, Defendant admits Hanjin Shipping Co.,  
24 Ltd. on November 7, 2007 was the Time Charterer of the M/V Cosco Busan. Defendant  
25 denies all other allegations contained therein.

26 8. Answering paragraph 14, Defendant admits Synergy Maritime, Ltd.  
27 is the Commercial Manager of the M/V Cosco Busan. Defendant denies all other  
28 allegations contained therein.

1           9.     Answering paragraph 15, Defendant admits that this is an admiralty  
2 and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil  
3 Procedure and is within the Court's admiralty and maritime jurisdiction under 28 U.S.C.  
4 § 1333 and Article III § 2 of the United States Constitution. Defendant denies Plaintiffs'  
5 claim that this Court has jurisdiction over this action because this is a class action  
6 lawsuit in which over \$5,000,000 is at issue and there are more than one hundred  
7 putative class members and that this Court has jurisdiction under the Extension of  
8 Admiralty Act. Defendant has insufficient information to respond to all other  
9 allegations in the paragraph and therefore based upon their lack of information and  
10 belief, Defendant denies the allegations contained therein in their entirety.

11           10.    Answering paragraph 16, Defendant admits venue in this Court is  
12 proper pursuant to 28 U.S.C. § 1391. Defendant denies all other allegations contained  
13 therein.

14           11.    Answering paragraph 25, Defendant denies that a class exists or that  
15 class treatment is appropriate. Defendant has insufficient information to respond to all  
16 other allegations in the paragraph and therefore based upon their lack of information  
17 and belief, Defendant denies the allegations contained therein in their entirety.

18  
19           12.    Answering paragraph 39, Defendant admits Regal Stone was the  
20 Owner and Hanjin Shipping Co., Ltd. was the Time Charterer of the M/V Cosco Busan.  
21 Defendant denies all other allegations contained in this paragraph.

22                           **AFFIRMATIVE DEFENSES**

23           1.     AS A FIRST SEPARATE AND DISTINCT AFFIRMATIVE  
24 DEFENSE, Defendant alleges that Plaintiffs' claims, in whole or in part, are not ripe.

25           2.     AS A SECOND SEPARATE AND DISTINCT AFFIRMATIVE  
26 DEFENSE, Defendant alleges that at this time, no case or controversy exists.

27           3.     AS A THIRD SEPARATE AND DISTINCT AFFIRMATIVE  
28 DEFENSE, Defendant alleges that Plaintiffs' claims are limited in amount by 33 USC §

1 2704(a) and 42 USC § 9607(c).

2 4. AS A FOURTH SEPARATE AND DISTINCT AFFIRMATIVE  
3 DEFENSE, Defendant alleges that Plaintiffs have failed to make claims as required by  
4 33 USC § 2713(a) and therefore the Court lacks subject matter jurisdiction.

5 5. AS A FIFTH SEPARATE AND DISTINCT AFFIRMATIVE  
6 DEFENSE, Defendant is informed and believes and thereon alleges that, by exercise of  
7 reasonable efforts, Plaintiffs could have mitigated the amount of damages allegedly  
8 suffered, but Plaintiffs failed and/or refused and continues to fail and/or refuse, to  
9 exercise efforts to mitigate their damages.

10 6. AS A SIXTH SEPARATE AND DISTINCT AFFIRMATIVE  
11 DEFENSE, Defendant alleges that Defendant is entitled to limitation of the value of the  
12 vessel and pending freight under 46 USC § 30505.

13 7. AS A SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE  
14 DEFENSE, Defendant alleges that the Complaint and each and every cause of action  
15 therein fails to state a claim upon which relief may be granted.

16 8. AS AN EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE  
17 DEFENSE, Defendant alleges that the alleged damages for which Plaintiffs seek to hold  
18 Defendant liable resulted in whole or in part from the negligent, deliberate, intentional,  
19 reckless, and/or unlawful acts or omissions of third parties, and Defendant is in no way  
20 responsible for or liable to Plaintiffs for any such acts or omissions on the part of third  
21 parties.

22 9. AS A NINTH SEPARATE AND DISTINCT AFFIRMATIVE  
23 DEFENSE, Defendant alleges that Plaintiffs lack standing to compel Defendants to  
24 establish a Fund & Emergency Clean-Up Program as alleged in the first cause of action.

25 10. AS A TENTH SEPARATE AND DISTRINCT AFFIRMATIVE  
26 DEFENSE, Defendant alleges that Plaintiffs' Complaint lacks sufficient specificity to  
27 state a claim for punitive damages.

28 11. AS AN ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE

1 DEFENSE, Defendant alleges that certain putative class members may have waived  
2 and/or released some or all of the claims asserted in the Complaint.

3 12. AS A TWELFTH SEPARATE AND DISTINCT AFFIRMATIVE  
4 DEFENSE, Defendant alleges that Plaintiffs' claims for injunctive relief are barred  
5 because Plaintiff has an adequate and complete remedy at law and/or Plaintiff cannot  
6 make the requisite showing to obtain injunctive relief.

7 **PRAYER**

8 WHEREFORE, Defendant prays for judgment as follows:

- 9 1. That Plaintiff takes nothing by way of its Complaint;  
10 2. That Plaintiff's Complaint be dismissed with all costs to be taxed  
11 against Plaintiff, including reasonable attorney's fees as may be allowed by case or  
12 statutory authority and/or agreement of the parties; and  
13 3. For such other and further relief as the Court deems just and proper.  
14  
15  
16

17 DATED: February 22, 2008

/s/  
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JOHN D. GIFFIN  
JULIE L. TAYLOR  
Attorneys for REGAL STONE, LTD. *in*  
*personam* and M/V COSCO BUSAN, *in rem*